Beaumont Glass Company *and* American Flint Glass Workers Union. Cases 6–CA–23999 and 6–CA–24192

March 16, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On December 31, 1992, Administrative Law Judge Donald R. Holley issued the attached decision. The General Counsel filed a limited exception and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exception and brief and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Beaumont Glass Company, Morgantown, West Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(e) and reletter the subsequent paragraph.

''(e) Mail a copy of the attached notice marked 'Appendix' to all employees in its employ as of the time of the unfair labor practices, including unfair labor practice strikers, at their last known address. The notice shall be duly signed by the Respondent on forms provided by the Regional Director for Region 6.''

[1] In his decision, the judge inadvertently failed to provide the full citation for *Safeway Trails*, 233 NLRB 1078 (1977).

[2] The General Counsel has excepted only to the judge's failure to provide in his recommended Order that the Respondent be required to mail copies of the notice to all of its employees, including all unfair labor practice strikers, at their last known address. The General Counsel notes that because the facility was closed and has not reopened for business, little benefit would be derived from merely posting the notice at the facility itself. We agree with the General Counsel and shall modify the Order accordingly.

Kim R. Siegert, Esq., for the General Counsel.
Donald G. Lucidi, Esq. (Humphreys, Nubani & Breault, P.C.), of Pittsburgh, Pennsylvania, for the Respondent.
Paul W. Myers, Esq., of Moundsville, West Virginia, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DONALD R. HOLLEY, Administrative Law Judge. Upon an original charge filed by the above-captioned Union in Case 6–CA–23999 on October 21, 1991,[1] the Acting Regional Director for Region 6 of the National Labor Relations Board issued a complaint on December 5 which alleged, in substance, that Beaumont Glass Company (Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act by bypassing the Union and dealing directly with employees when it published and distributed on October 17, 1991, a memorandum which solicited bargaining unit employees to abandon a strike. Respondent filed timely answer denying it had engaged in the unfair labor practices alleged in the complaint. Thereafter, the Union filed the original charge in Case 6–CA–24192 on January 8, 1992, and on February 24, 1992, the Regional Director for Region 6 issued an order consolidating Case 6–CA–241292 with Case 6–CA–23999 for trial and a consolidated amended complaint which realleged the matter contained in the December 5, 1991 complaint and alleged that on stated dates Respondent, acting through various alleged supervisors, engaged in specified conduct which violated Section 8(a)(1) and (5) of the Act. Respondent filed timely answer denying that it had violated the Act as alleged. Thereafter, on April 7, 1992, the Regional Director amended paragraphs 10 and 15 of the complaint. Respondent filed timely answer denying it had engaged in the unfair labor practices alleged in the complaint as amended.

The trial in the above case was held in Morgantown, West Virginia, on June 25 and 26, 1992. All parties appeared and were afforded full opportunity to participate. On the entire record, including consideration of posthearing briefs filed by the parties, and from my observation of the demeanor of the witnesses who appeared to give testimony, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a West Virginia corporation, maintains an office and place of business in Morgantown, West Virginia, where it is engaged in the manufacture and nonretail sale of glassware and related products. During the 12-month period preceding September 30, 1991, it purchased goods valued in excess of $50,000 from points located outside the State of West Virginia and, during the same period, it sold goods valued in excess of $50,000 to customers located outside the State of West Virginia. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. STATUS OF LABOR ORGANIZATION

It is admitted, and I find, that American Flint Glass Workers Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates herein are 1991 unless otherwise indicated.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent Beaumont operates a glass plant in Morgantown, West Virginia. Its principal products consist of handblown components for lamps and limited gift items. At the time of the hearing, it employed approximately 80 employees.

The Union has represented Respondent's employees since approximately 1905, the year in which the Company was formed. The employees belong to one of two local unions; skilled employees belong to Local Union 95 and unskilled employees belong to Local Union 536.

The parties have been signatory to a succession of collective-bargaining agreements over the years. On July 10, 1988, when the 1985–1988 agreement was in effect, the Union was notified that Respondent had been purchased by the L. E. Smith Glass Company. The new owner and the Union agreed to extend the existing bargaining agreement to September 4, 1989.

Shortly before the above-mentioned agreement was to expire, the parties commenced negotiations for a new agreement. Paul Myers, an International representative, and a bargaining committee composed of members of both Locals 95 and 536 represented the Union in negotiations.[2] Respondent was represented by several individuals, the last of whom was Michael Miller. Miller is employed by SME, Industries, Inc., Beaumont's corporate parent.[3]

Negotiations continued from late 1989 through mid-September 1991, with oral extensions of the collective-bargaining agreement in effect immediately prior to September 4, 1989. On September 21, 1991, the Union commenced a strike at the facility. It is undisputed that the strike commenced as a result of the Union's dissatisfaction with Respondent's position on economic issues including wages, insurance and pension contributions. A picket line was established off Respondent's property near a railroad track approximately 60 feet from the front door of the factory. The legends on the picket signs which were used simply stated that Locals 95 and 536 were ''on strike'' and several contained the verbiage ''Thanks for your Support'' or ''Honk for Support.''

International Representative Myers testified he stayed in a room at the Holiday Inn in Morgantown throughout the negotiations and the strike. He was present at the picket line for substantial periods of time each day. On Saturday afternoons, he journeyed to his home in Moundsville, West Virginia, to visit with his family and collect clean clothes. He returned to Morgantown each Sunday afternoon. Similarly, Miller testified that he came to Morgantown each weekday and attempted to arrive at the factory around 8:30 a.m. He indicated he normally stayed about an hour, but stayed longer if circumstances required his continued presence.

Negotiations continued after the strike began. Myers credibly testified that while Miller or other Respondent officials might contact him at the Holiday Inn or leave messages for him there, all contract proposals were delivered and/or advanced at the actual bargaining sessions which were held at the factory or at the Holiday Inn. Miller corroborated Myers' testimony.

B. *The October 17, 1991 Memorandum*

On October 17, 1991, Miller authored and caused Frank Carlow's secretary, Amy Godwin, to type the following memorandum:

> PROPOSAL PRESENTED TO THE MEMBERS OF 95 AND 536 OF THE AMERICAN FLINT GLASS WORKERS UNION AFL–CIO
>
> October 17, 1991
>
> In an effort to avoid a plant shut down and the loss of all jobs at Beaumont the Company proposes the following compromise to the members of locals 95 and 536.
>
> The Company remains committed to its offer of October 7, 1991 to increase the Company contribution by 10 cents per hour towards Health Insurance coverage. The Company also is committed to work with the employees to find a lower cost provider of Health insurance coverage.
>
> The Company has been advised through conversation with several Union members that given the current situation that there are two views held by Members.
>
> Group one—Finds the current situation economically unacceptable and will not return to work. This group would like to be eligible to receive unemployment compensation benefits and pursue other job opportunities with the Company.
>
> Group two—Finds the current situation economically difficult, but would prefer to return to work under the most recent proposal to save their current job and give the Company an opportunity to continue its business.
>
> To break the current impasse the Company proposes the following compromise for both groups.
>
> Group one—The Company is willing, at the written request of the employee, to file a permanent layoff claim with the state to make the employee eligible for maximum unemployment benefits.
>
> Group two—The Company will accept all individuals back in this group and restructure the work force to utilize all individuals that elect to return to work. As stated previously, the Company will pay the additional 10 cents towards health coverage and work with employees left to find a lower cost insurance carrier.
>
> The Company views this proposal as a compromise to give everyone what he or she wants at this point in time.

Miller testified that he supplied the secretary with the names and addresses of the members of Locals 95 and 536, as well as with Myers' business card and instructed her to mail cop-

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[2] Local 536 members of the committee were: Ted Mason (until he became a supervisor in early 1990); John McGinnis; Isa Metheny; Wilma Rohr (until May 1991); and Bill Mathew (after May 1991). Local 95 members were: Larry Clemsie; Rick Snyder; and Mike Sine (from March 1991 forward).

[3] SME, Industries, Inc., is headquartered in Uniontown, Pennsylvania, which is some 20 to 25 miles from Morgantown. Miller was assigned to participate in the Beaumont negotiations in July 1991, by one Frank Carlow, described by Miller as the owner of SME, which, in turn, owns Respondent Beaumont.

ies of the memorandum to everyone.[4] Miller testified that mailing of the documents was accomplished on Friday, October 18. Myers testified he first saw a copy of the document when an employee showed him a copy on the picket line on Saturday morning, October 19. When he was asked what prompted the mailing of the October 17 memorandum, Miller stated:

> It was my opinion that we had reached somewhat of an impasse in negotiations. The offer,—The previous offer that we had made, which I believe was October 7, that was presented to Mr. Myers and the negotiating committee was reviewed at that time, it was rejected as I recall. I requested Mr. Myers at that time if he would consider taking it to the membership and he indicated that he would not do that. Between that time and the 17th, the drafting of this letter, in staff meetings with my staff at Beaumont we had daily morning meetings and the—I asked my staff there what their feelings were, you know, with regards to getting this thing off dead center and getting it moving ahead. The staff indicated that there were in fact a number of Union workers that in fact, you know, were interested in returning to work and there of course was another group that were rather adamant about not returning to work, so we were dealing with that problem, two separate sets of interest.
>
> So in an attempt to address both interest groups I devised this plan which I set forth in my letter of October 17 to try to satisfy both groups, and also in an effort to get this to all the individual members of the Union as well as the negotiating team and Mr. Myers so that it had a fair review I made the determination to do a direct mailing to all parties, and directed my secretary to do that.

Myers testified that the proposals made by Respondent to the group 1 and group 2 employees in the October 17 document had never been made or discussed at bargaining sessions prior to the time the document was mailed to him and the employees.[5] He further testified that he discussed the October 17 document and its contents with approximately 25 employees and they were upset and angry, and viewed the proposal as an attempt to cause dissension among the employees and as an attempt to undermine his authority. He told union members that acting in any manner on the October 17 proposal would only ''cause dissention [sic]; that those employees who requested permanent layoff would no longer be counted as employees of Beaumont Glass and would not be allowed to vote on the company proposal, while those wishing to return to work would find that if not enough persons returned to work, the Company would not restart the plant; and that under such circumstances, the Company would close the plant and the employees would lose their Union. Myers also told the employees that the Company was trying to undermine his authority through the October 17 memorandum. Myers testified a number of union members demanded that the Company's proposal be put to a vote, and that one member, in particular, was adamant about the matter. No such vote was taken. Isa Matheny, president of Local 536, commented on the October 17 memorandum at a subsequent meeting with management, but the Union never formally responded to the October 17 memorandum.

C. *Statements of Supervisors*

During the course of the strike, Respondent's supervisors continued to report to the plant each day. As the Company was performing no production work, the duties of the managers and foremen consisted primarily of making security rounds. On occasion, when making security rounds or entering or leaving the plant, management personnel conversed with members of the Union on the picket line. General Counsel adduced testimony through some 12 employee witnesses which he claims, and the complaint alleges, constituted violations of Section 8(a)(1) and (5) of the Act. The testimony of such employees and that of Respondent's supervisors is summarized below.

1. Conversations involving Frank Bonvenuto

Frank Bonvenuto, who had retired before the hearing, was the superintendent of Respondent's hot metal division for the 2-year period preceding the strike. General Counsel sought through testimony given by employees Ilene Milovich, Judy Joseph, James Willie Smith, William Grazulis, and John McGinnis to establish that Bonvenuto engaged in violative behavior during the strike.

Milovich testified that in mid-October 1991, Bonvenuto approached the picket line when she, Ida Buffalo, Kitty Anderson, Shelly Raddish, and others were present. After making some general comments, she claims he stated they should be happy with what they were getting and happy that they had a job and insurance and they should go back to work. At some point, Bonvenuto told Milovich that she had no right to be on the picket line, and that she had not worked at Beaumont long enough to ask for more money. When Bonvenuto thereafter stated the employees had better go back to work or the plant would close, Milovich remarked that the Company had been threatening to close the plant since the strike began. According to Milovich, Bonvenuto then told her that she had no right to strike and that she should go back where she came from. Milovich testified she said she would go back where she came from if she could, but she was laid off from her previous job, and, in any event, she had paid her union dues and had just as much right to strike as anyone else. Milovich claimed the conversation ended with Bonvenuto stating the Company had offered 10 cents an hour more and asking the picketers what else they could want. Milovich stated the response was that the employees present laughed at Bonvenuto.

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[4] See R. Exh. 1. While Myers' business card contains a post office box address, he testified the envelope containing his copy of the October 17 document was sent to 71 Oak Avenue. The envelope was not produced. It is undisputed that Myers' copy of the document was waiting for him at his home when he arrived on Saturday, October 19.

[5] Respondent claims in its brief (pp. 3–4) that the insurance offer was made and rejected at a bargaining session held on October 7, 1991. While it appears the proposal and/or offer made to group 1 employees was not advanced before October 17, in the absence of evidence which would reveal the content of Respondent's October 7 proposal, I cannot determine whether the proposal made to group 2 employees had previously been made and rejected.

Employee Joseph, Local 536's corresponding secretary, described a conversation Bonvenuto had with her and other picketers in mid-October or early November 1991. She described the conversation as follows:

> [W]e were just talking, and then he [Bonvenuto] came out about that if we hadn't blown our chances sending people down to talk to Mr. [Frank] Carlow that we would be working today, and then he [Bonvenuto] went on to say that we were just a number, he [Carlow] would shut the plant down and it wouldn't even bother him [Carlow]. [Tr. 116].[6]

Employee Smith, the president of Local 95, testified that during the third week of the strike Bonvenuto and Ted Mason, Respondent's hot shop foreman, approached him and William Grazulis on the picket line with a letter. The sheet contained a proposal offering the Union 40 cents an hour for insurance and a 25-cent-per-hour raise. Smith claims Bonvenuto asked what was wrong with them accepting the 65-cent offer, and what would it take to get us back to work. He claims he said $1 an hour and paid insurance.

Employee Grazulis described a similar conversation, but placed it as occurring in early to mid-November 1991. Grazulis recalled the proposal was for Respondent to give 40 cents per hour in lieu of insurance and a 10-cent-per-hour raise. Grazulis recalled Bonvenuto asked them what they thought of the proposal and they replied, ''Not too much.'' He recalled that Bonvenuto then asked what it would take for them to return to work and claims he replied ''a dollar on the hour and my insurance paid.''

Employee John McGinnis, Local 536 vice president and a member of the Union's negotiating committee, testified that at various times in October and November 1991, Bonvenuto and other supervisors would approach the picketers and advise the employees to go back to work, stating there was nothing to be gained by staying out.

When he appeared to testify, Bonvenuto did not seek to refute Joseph's testimony. On direct examination, he claimed his conversation with Milovich was limited, with her claiming the workers were entitled to more because they were treated like dogs by the foremen, and with him responding if she was not happy with the way foremen treated her, she should look for employment elsewhere. He admitted he spoke with Grazulis and Smith one night at the picket line, but claimed that when Grazulis asked what was going on, he merely replied he did not know; that it would be nice if the employees would return to work. Bonvenuto recalled no conversations with McGinnis. During cross-examination, he admitted he told picketers that ''[I]n my opinion . . . if things didn't turn around there was a good possibility it would close''; ''[I]t was may opinion that I thought the plant would close if they did not get back to work.''

I credit fully the testimony of employees Milovich and Joseph, which was not seriously disputed by Bonvenuto. I similarly conclude that Smith and Grazulis recounted their best recollections of their conversations with Bonvenuto, although one or both of them were obviously incorrect when describing the date of the insurance proposal discussion and the amounts of money involved. Additionally, I credit the limited testimony given by employee McGinnis. While I do not doubt that Bonvenuto's assertion that he was stating his personal opinion when making the plant closure remarks, I do not credit his claim that he told the employees when making the remarks that he was stating his opinion.

[6] Bonvenuto did not seek to refute Joseph's testimony.

2. Conversations involving Nicholi Callas

Nicholi (Nick) Callas has been employed by Respondent for 21 years. He has been its production manager for the last 12 years. General Counsel sought, through the testimony of employee witnesses Jacqueline Howenstein, Ilene Milovich, Virginia Greathouse, Judy Joseph, and John McGinnis to establish that Callas engaged in conduct which violated the Act during the strike.

Employee Howenstein testified that in early October 1991, she and Irene Blosser walked up the railroad track and encountered Nick Callas and Frank Bonvenuto outside the blowing room. She claims the following conversations occurred:

> [W]e said Hi, and Nick asked us when we were going back to work, and I said we are not going back to work until we get what we want, and Nick said if we don't go back to work we will be forced to close the factory, and I said no, Frank Carlow will, and he sad no, the union will force to close it. And then Frank Bonvenuto got off of his—he started talking, he said he had been quiet long enough, he said we ought to be glad we have a job, and he said everybody's insurance is going up, and he said the guys in the blowing room doesn't want to work anyway, they find excuses. And so, I said we will lose our purpose if we go back now, so we started walking away from him.

Employee Greathouse testified that Nick Callas conversed with pickets on several occasions around October 1991. Asked what he said on those occasions, she responded:

> He asked us was we going to vote, or when we was going to vote, because Carlow would shut the factory down, and if we didn't want to work they would hire replacement workers or he would shut the factory down and turn the gas off.

Employee Milovich testified that Callas told her, Shelly Raddish, Ida Buffalo, and Kitty Anderson on two occasions during October or November 1991, while they were picketing, that they should go back to work or else the plant would close. She testified that in early December, Callas stated from his car windows when leaving the plant ''they were going to close the plant down, he said they were turning the gas off, and he asked if we were going to go back to work.'' Milovich testified the gas was turned off about a week after Callas made the described remarks.

Employee Joseph testified that shortly after the October 17 proposal was sent to employees, Nick Callas approached the picket line and engaged her in conversation. She recalled Callas asked what the employees wanted, and she replied ''well, what did they ask for?'' Callas said ''25, 25, 25,'' and Joseph agreed that was what they wanted. She testified Callas then said ''you will never get it.''

Employee McGinnis and Callas were both at a bowling alley in Morgantown on November 18, 1991. McGinnis testi-

fied that Callas approached him and asked if he knew how many people would be willing to return to work. The employee responded ''2 or 3'' and Callas stated he thought it would be ''more than that.''

When he appeared as a witness, Callas admitted he conversed with members of the Union on the picket line five or six times. He indicated the conversations varied, but concerned, in main, questions and answers about what everyone would think would happen. He testified that when he was asked what he thought would happen that ''I told them that I thought that the ownership would close the plant if some kind of agreement could not be made.'' Callas testified he recalled the incident during which he and Bonvenuto spoke with Irene Blosser and another employee down the track by the blowing room entrance, but he indicated he could not recall the specifics of that conversation which probably occurred in early December 1991. Callas recalled that while he and Blosser were at Suburban Lanes on one occasion, the employee asked him what he thought was going to happen with the plant and he told her he thought it would close if the strike was not settled. While Callas indicated he did not recall having any conversation with Virginia Greathouse, he testified he may have made the comments attributed to him by Greathouse ''on one of those stops to the picket line just to say hello if she would have been pulling her duty.'' Callas did not deny the plant closure comments attributed to him by employee Milovich. When asked if he conversed with Mr McGinnis, Callas indicated he thought it was basically the same conversation he had with Blosser. He said, however, ''[I]t has been so long that I don't recall exactly what I said, because I didn't think I would ever have to recall these conversations.''

In sum, Callas did not seriously seek to refute the testimony given by General Counsel's witnesses and I am convinced they sought to state their best recollection of his remarks.

3. Conversations involving Ted Mason

Ted Mason has been employed by Respondent for 12 years. During the past 2 years, he has been Respondent's hot shop foreman. Before he became a foreman, he was a member of Local 536. For about 1-1/2 years, he was the Union's corresponding secretary, and from 1982 to 1986, he served as its president. General Counsel sought through testimony given by employees Larry Clemsic, William Mathew, William Grazulis, and James (Willie) Smith to establish that Mason engaged in conduct which violated the Act during the strike.

Employee Clemsic is the secretary of Local 95 and he was a member of the Union's negotiating committee. He indicated that during September and October 1991, he, Rick Snyder, Tom Lenhart, Janet Smith, and Bill Lipscomb picketed on the 11 p.m. to 7 a.m. shift and that Mason visited with them at the picket line on three to five occasions. He testified Ted would walk across the tracks and asked how they were doing, and they, in turn, would ask him how things looked. He claimed that ''a couple of times he said that Carlow said if we didn't go back to work that he would shut the plant down.

William Mathew is the treasurer of Local 536 and he is a member of the Union's negotiating committee. He testified that during the week before Thanksgiving 1991, Mason came out to the picket line during the midnight shift and asked him to accompany him to Hardee's Restaurant. He accepted the invitation and claims that going there, and while there, ''Ted asked me . . . if there was anything that he knew that could get us back to work, because he said he had a meeting with Frank Carlow the following week.'' Mathew recalled he told Mason ''that we had our last offer and that there was nothing more that could be said.''

Mathew said that, at least twice a week during the period of picketing, Mason would come to the picket line and talk with them about figures and insurance telling them ''I don't understand why you don't take the man's last offer and go back.''

According to Mathew, 2 days before Thanksgiving 1991, Ken Culp, Bob Dunhizer, and Mason approached the picket line with a piece of paper containing what appeared to be a telephone message. Mathew read the paper and passed it to other employees. He claims it contained an order to shut off the gas to the furnace, and that Mason stated to them they had better not let things go further and if they did ''it would be all over with.'' Mathew claims a similar situation occurred in early December when Mason handed him a letter addressed to Pat Lavery instructing Ted Mason to start the furnace shutdown. Mathew recalled the letter had Frank Carlow's rubber-stamped signature on it.

Employee Grazulis testified that in early December, Ted Mason came over to him and Willie Smith and told them he had orders to turn the gas off at 10 o'clock that morning. Late that afternoon, he claims Mason came back and told them:

> [Y]ou guys can kick my ass if you want to, but I have to ask you this again—do you want to take a vote to go back to work. I can give you a couple more hours before I turn off the gas.

Employee James Smith was appointed president of Local 95 in July 1991. He testified that in early December, Ted Mason came up to him and said that he had better get the members together and get a vote to go back to work because he had orders to shut the furnace down. He asked if the furnace was going to be shut down permanently and Mason said yes. Smith indicated he discussed the matter with members of the negotiating committee and that he and Judy Joseph, a member of the committee, later went into the plant where Mason showed them a letter which was not signed.[7] He testified Mason again told them they had better get a vote to go back to work or he was going to shut the furnace clear off. Smith claims the furnace was not shut off on the day Mason discussed the matter with him.

When he appeared as a witness, Mason admitted he conversed with employees on the picket line during the strike. He indicated that frequently such conversations were about the weather and sports, but that sometimes the members would ask him what was going on on the company side.

Mason indicated during his testimony that in conversations with Mathew, Grazulis, and Smith, he told them that if there was any way of not losing his job title, he would as a friend talk to Norm Pennington and Mike Miller to see if they could get negotiations going. Asked if he conversed with

[7] Myers testified he instructed Smith and Joseph to go to the plant to seek a copy of the letter.

Mathew in late October or early November, he testified Mathew asked him ''what the hell'' was going on and he told him the bills were piling up, they were losing customers, and they were going to have to hire replacement workers. With respect to turning off the gas, he testified Smith confronted him in late November or early December and stated he had heard a rumor that the gas was going to be shut off. Mason said he confirmed that the gas would be shut off within a matter of hours. Mason denied he told union members he would talk with Frank Carlow, and he denied he told employees, during conversations involving the furnace, that this is your last chance, you better have a vote now.

Mason's testimony was so lacking in specificity and was so unconvincing that I credit General Counsel's witnesses where there is a conflict in testimony.

4. Conversations involving Kenneth Culp

Kenneth Culp has been employed by Respondent as a maintenance supervisor since July 24, 1991. General Counsel sought through the testimony of employees Virginia Greathouse, Reaver Marshall, and Judy Joseph to establish that Culp engaged in conduct which violated the Act during the strike.

Greathouse testified that as Culp was leaving the plant in his van sometime in October 1991, he ''just asked us—started out how we were doing, and what was going on and when we was going to vote.'' She claimed they told him they had nothing to vote on and he remarked, ''Who was Paul Myers that we were listening to him.''

Employee Marshall testified that on a date she estimated to be 1-1/2 months after the strike began, Culp stopped his van at the picket line and engaged Mike Sine, a member of the Union's bargaining committee, in conversation. Marshall said as the conversation progressed, she and others started to listen and Culp stated, ''[W]e had better take the Company's offer, or, you know, we weren't going to have any jobs there, they are just going to shut it down, and he said that if we didn't go back they would just hire replacement workers for us . . . that they could get anybody to do our jobs.'' Marshall indicated that when Culp said ''he could shut the factory down and open it nonunion and there was nothing we could do about it,'' she walked away.

Joseph testified she heard Culp make comments at the picket line on several occasions in mid-October or early November 1991. On one occasion, she claimed she heard him say ''Mr Carlow didn't care . . . the plant would shut down, we were just a number, we meant nothing to Carlow, and he would shut the plant down.''

When he appeared to testify, Culp stated he had no recollection of any discussion with employees concerning replacements, closing of the plant and opening as a nonunion facility, or any comment to the effect that Frank Carlow did not care for employees; they were just a number to him. Culp was not an impressive witness. I credit employees Greathouse, Marshall, and Joseph, without reservation.

5. Conversations involving Lorna Shuttleworth

Lorna Shuttleworth is Respondent's finishing and decorating foreman. General Counsel sought to prove she engaged in conduct which violated the Act during the strike through the testimony of employees Isa Matheny and Patrice Raddish.

Employee Matheny testified that on a Saturday evening in mid-October 1991, Shuttleworth stopped her car at the picket line while she, Ida Buffalo, Ilene Milovich, Kitty Anderson, and Shelly Raddish were picketing. Matheny indicated the named individuals were coworkers in the finishing and decorating departments, and someone asked Shuttleworth if any orders had been lost. She claims Shuttleworth replied ''Yes, we have lost Schwartz and Stiffel.'' Employee Raddish corroborated Matheny's testimony, adding that Ida Buffalo was the employee who asked Shuttleworth if any orders had been lost.

Shuttleworth recalled stopping at the picket line on an occasion when losing customers was discussed, but her version of the incident is that the picketers told her that a couple of valuable customers, namely, Schwartz and Stiffel, had been lost. She claims she told them she did not know that; that ''we heard more from them than from the Company because we worked the midnight shift.'' On cross-examination, Shuttleworth admitted she stated in a pretrial affidavit the following:

> On one occasion Isa Matheny, President of Local 536 of the union asked me whether the Company had lost two customers, specifically the Schwartz and Stiffel accounts. I told her this was probably true, though I was not sure myself.

Shuttleworth denied she told employees that the plant would close.

Noting that Shuttleworth's recollection, at the time she gave the Board an affidavit, was similar to that of employees Matheny and Raddish, I credit the employees' version of the above-described incident.

D. *Fall and Winter Events*

In early November 1991, Respondent decided to hire some replacement workers. Advertisements were placed, and on November 12, some 15 replacement workers began work. The replacement workers did not engage in any production work during their tenure, and all were terminated prior to Christmas 1991.

Norman Pennington, Respondent's assistant general manager, indicated during his testimony that Respondent fell behind in its scheduled natural gas payments as the strike progressed. By December 6, 1991, it was some $95,328.53 in arrears, and on that date Hope Gas, Inc. gave its formal notice that the gas service would be terminated on December 16, 1991. Pennington testified that on December 2, 1991, Miller gave the order to shut down the furnace. The order was given to Pennington and Thomas Lavery, Respondent's coordinator, who relayed it to Mason. Mason asked Lavery to give him a letter from Carlow authorizing the shutoff of the furnace. Lavery obtained such a letter, singed it, and gave it to Mason.

Pennington testified that after Miller ordered the shutdown of the furnace, the task was to be accomplished gradually to minimize damage to the pots which would result. He claims he went to the picket line and told either Isa Matheny or Paul Myers that the shutdown was to start on December 4, 1991. Apparently, Pennington discussed the matter with

Matheny as Myers testified Bill Mathew called him around November 30, 1991, to tell him that Ted Mason had showed him a letter saying they were going to shut off the furnace. In any event, Myers sent Judy Joseph and Jim Smith to the plant on December 2, 1991, with instructions to obtain any written order which directed plant personnel to turn off the gas. After Joseph and Smith returned indicating they had not been given any such written order, Myers personally went to the plant on December 3, 1991, and discussed the situation with Pennington, Lavery, and Mason. While he was not given any writing, he was permitted to read a written order directing the shutdown of the furnace. On December 16, 1991, Hope Gas, Inc. terminated the facility's gas service. The furnace had been completely shut down prior to that time.

As noted, supra, the Union filed the original charge in Case 6–CA–23999 on October 21, 1991. That charge alleged that Respondent violated Section 8(a)(5) and (1) of the Act by distributing the October 17, 1991 memorandum. The Region issued a complaint on December 5, 1991, and, at or about that time, the language on the picket signs was changed to read: ''Unfair Labor practice charges filed against Beaumont Glass Company, Locals 945 and 536.'' In addition, the words ''backstabbers'' and ''scabs'' were written on the signs. Employee Reaver Marshall testified that she wrote the word ''backstabber'' on the signs because their foremen had been making threats while they picketed, and she wrote the word ''scabs'' on the signs to protest Respondent's use of replacement employees. She testified the reference to unfair labor practice charges was put on the signs because Respondent attempted to split them into two groups by distributing the October 17 memorandum and because of the actions of their foremen. Employee Greathouse gave similar testimony regarding the reason for changing the language on the picket signs.

On March 4, 1991, the Union made an unconditional offer to return to work on behalf of its striking members. By letter dated March 10, 1992, Respondent requested it be given 30 days to respond to the Union's offer in order to permit it ''to assess the damage done by the strike and the feasibility of restarting operations.'' The Union agreed to Respondent's request by letter dated March 13, 1991. As of the close of the hearing herein, the employees represented by the Union had not returned to work, no replacement employees were working at the plant, and the facility had not been reopened for business.

E. *Issues*

The issues posed by the pleadings are:

1. Whether Respondent violated Section 8(a)(1) of the Act by threatening its employees with plant closure if they continued to strike and engage in union activities.

2. Whether Respondent, by direct statements by its supervisors and issuance of the October 17, 1991 proposal, violated Section 8(a)(1) and (5) of the Act by bypassing the Union and engaging in unlawful solicitation of its employees.

3. Whether the strike which commenced on September 21, 1991, was converted into an unfair labor practice strike.

In his brief (p. 35), General Counsel adds a fifth issue by asserting that I should find that Respondent violated Section 8(a)(1) when Bonvenuto stated to employee Milovich that she had no right to strike and she should go back where she came from.

IV. DISCUSSION AND CONCLUSIONS

A. *The Plant Closure Threats*

Paragraph 10 of the complaint alleges that in mid-October 1991, Lorna Shuttleworth threatened employees with plant closure if they continued to strike and engage in union activity, and it alleges that Respondent supervisors Frank Bonvenuto, Nick Callas, Ted Mason, and Ken Culp repeatedly threatened employees with plant closure if they continued to strike and engage in union activity during the months of September, October, November, and December 1991.

As revealed, supra, the testimony, which Respondent does not seriously dispute, and which I find to be credible, reveals that Respondent supervisors repeatedly sought to cause employees to cease picketing and return to work during the months of September, October, November, and December 1991, by telling them the plant would be closed and/or the gas to the furnace would be shut off if they did not return to work.[8] Specifically, I find that Bonvenuto told employee Milovich in mid-October 1991 that ''employees had better go back to work or the plant would close,'' and that Bonvenuto told employee Joseph in early November 1991, that ''we were just a number, he [Carlow] would shut the plant down.'' Similarly, I find that Callas told employee Greathouse in October 1991 that Carlow would shut the factory down and turn the gas off; and that he told employee Milovich in October and November 1991, that they should go back to work or the plant would close. Similarly, Mason told employee Clemsic in September and October 1991 that Carlow said if we did not go back to work he would shut the plant down; he told employee Mathew in late November he had orders to shut the gas off to the furnace and if they let things go further ''it will be all over with''; and that he told employee Grazulis in early December ''if you want to vote to go back to work, I can give you a couple more hours before I turn off the gas.'' Finally, credited record evidence reveals that Supervisor Culp told employee Marshall in late October 1991, that ''he [Carlow] could shut the factory down and open it nonunion and there was nothing we could do about it''; and he told employee Joseph in mid-October or early November 1991, ''we meant nothing to Carlow and he would shut the plant down.''

While Respondent does not seriously attack the credibility of General Counsel witnesses who attribute the above-described remarks to various of its managers and supervisors, it contends I should not find the violation(s) alleged because the comments were statements of opinion and the record fails to reveal that low-level supervisors were privy to information concerning strategic business planning decisions. In support of its argument, it cites *American Stores Packing Co.*, 277 NLRB 1656 (1986).

In *American Stores Packing Co.*, 5 lower level supervisors told 10 employees (6 of whom were union officials) in 7 separate conversations that, if the employees did not accept

[8] Although General Counsel contends that supervisor Shuttleworth engaged in similar conduct by falsely telling employee Matheny that Respondent had lost two named accounts, I find the contention to be without merit. Shuttleworth's comments were noncoercive.

the concessions the Respondent had proposed to the Union, the plant would close or would probably close. The judge concluded the statements were not unlawful threats to close the plant because the Respondent was merely communicating in noncoercive terms with employees about the proposals it had already made to the Union and telling employees its version of the status of those negotiations. The Board agreed that in the circumstances described, the statements were not coercive, stating it could not find that the statements undercut the Union's status as bargaining agent as all the statements were directed to union officials. The Board specifically indicated in *American Stores Packing Co*. that it did not rely on the judge's finding that the lower level supervisor who made the statements were merely expressing their own opinions rather than speaking for Respondent.

Patently, the instant situation differs materially from the situation which existed in the above-cited case. Here, the import of the statements made by Respondent's managers and supervisors was that the plant would be closed and/or the gas to the furnace would be turned off if the employees continued to refuse to return to work. Thus, the remarks were not simply a prediction of possible objective consequences of the Union's failure to accept what Respondent had offered in negotiations. Moreover, as the record reveals that Respondent's chief negotiator, Miller, visited the facility each weekday morning and met with his staff, the statements made by the managers and supervisors who held the top management positions at the plant could logically be viewed by employees who observed Miller come and go as ''inside information'' possessed by the managers and supervisors. Significantly, here, unlike the situation in *American Stores*, the employees threatened, including Milovich, Grazulis, Greathouse, and Marshall, held no union office or position on the bargaining committee. In sum, I find that the conduct of Respondent's supervisors described above was coercive and that by engaging in such conduct Respondent violated Section 8(a)(1) of the Act as alleged.

B. *The Bonvenuto/Milovich Conversation*

Employee Milovich credibly described a conversation she had with Supervisor Frank Bonvenuto, at the picket line, in the presence of employees Ida Buffalo, Kitty Anderson, and Shelly Raddish, as follows (Tr. 65 & 66):

> Well, he came over, we just talked in general at first, then he told us that we should go back to work. He was telling us that we should be satisfied with what we were getting, he said we should be happy that we have a job and insurance, and Shelly Raddish said to him, with her pay, once the insurance was deducted it was hard to make ends meet. She was telling him that she really felt sorry for the men in the blowing room that did not get 40 hours a week and they made even less, and he told her that the men in the blowing room didn't want to work. He said that he was going to have a poster made, and he said he was going to save the newspaper articles about the men not getting 40 hours a week and he was going to put them up in the blowing room. He said that he would put it right up into their faces if they ever asked him to leave early.
>
> And then he says to me, he said I didn't have any right to be on the picket line, he said I didn't work there long enough to ask for more money, and then he said we better go back to work or else the plant would close. And I told him, I said well they have been threatening to close the plant since the strike began and he became very angry.
>
> Then he told me, he says, I didn't have any right to strike, he said I should go back to where I came from, and I told him I would if I could, but I was laid off from my previous job, and I told him I said, I pay my Union dues and I have just as much right to be there as anyone else, and then he was very angry at that time too.
>
> And then Shelly Raddish asked him why was he still working, and he says he really didn't have to work and he said that we better go back to work or else the plant would close, and he said you ought to be happy with what you make. He said that they offered you 10 cents an hour more, what else could you want and we just laughed at him, and Shelly—

Counsel for the General Counsel contends for the first time in his brief that by telling employee Milovich she ''had no right to strike'' and that she ''should go back where she came from,'' Bonvenuto engaged in conduct which violates Section 8(a)(1) of the Act.

The specific remarks complained of above contain no threat of reprisal or force or promise of benefit. They constitute the type of remarks that one might expect to hear pickets and nonpicketing individuals make in a strike situation. I find that Bonvenuto's above-described comments to employee Milovich do not rise to the level of violation of Section 8(a)(1) of the Act.

C. *The Alleged Unlawful Interrogation*

I have found, supra, that on November 18, 1991, at a bowling alley, Supervisor Callas asked employee McGinnis how many employees would be willing to return to work. When McGinnis replied two or three, Callas simply indicated he though there would be more and ended the conversation. I have similarly found that supervisor Mason discussed insurance figures with employee Mathew and others at the picket line and stated to Mathew and others, ''I don't understand why you don't take the man's last offer and go back [to work].'' General Counsel contends that supervisors Callas and Mason unlawfully interrogated employees in violation of Section 8(a)(1) of the Act by engaging in the described conduct.

In *Rossmore House*, 269 NLRB 1176, 1177 (1984), the Board quoting *Midwest Stock Exchange v. NLRB*, 635 F.2d 1255, 1267 (7th Cir. 1980), stated:

> It is well established that interrogation of employees is not illegal per se. Section 8(a)(1) of the Act prohibits employers only from activity which in some manner tends to restrain, coerce or interfere with employee rights. To fall within the ambit of § 8(a)(1), either the words themselves or the context in which they are used must suggest and element of coercion or interference.

With respect to the above-described Callas-McGinnis incident, I note that Callas did not inquire about employee McGinnis' feelings on the subject of returning to work, nor did he attempt to ascertain the identity of the two or three

employees whom McGinnis told him might want to return to work. The words used by Callas do not suggest an element of coercion and I find the context in which the limited interrogation occurred was likewise noncoercive. I find the interrogation did not rise to the level of a violation of the Act.

With respect to the Mason-Mathew situation, the record simply reveals that Mason discussed an offer Respondent had made to the Union at formal negotiations with Mathew and others, and expressed his feeling that he thought they should have accepted the offer and returned to work. In my view, such conduct is permissible under the rationale expressed in *Proctor & Gamble Mfg. Co.*, 160 NLRB 334, 340 (1966). Accordingly, I find the conduct was permissible by virtue of Section 8(c) of the Act. See *American Stores Packing Co*., supra.

D. *Alleged Direct Dealing by Supervisors*

Paragraphs 15(a) and (b) of the complaint, as amended, allege that named Respondent supervisors bypassed the Union and dealt directly with employees during the period mid-October through mid-November 1991. While the complaint alleges that the violative conduct consisted of ''soliciting employees to vote on Respondent's constant proposals, and/or to return to work''; and ''soliciting employees as to what it would take to obtain a collective-bargaining agreement,'' the portions of the record relied upon to prove the alleged violations were not set forth in General Counsel's brief. Incidents which appear to me to generally involve solicitation of employees are set forth below and analyzed.

1. As found, supra, in mid-October 1991, Bonvenuto told employee Milovich the Company had offered 10 cents per hour more and he stated, ''what else could you want.'' Milovich and her fellow employees laughed at Bonvenuto.

I do not view the above-described incident as one wherein Bonvenuto was seriously asking Milovich what she and her fellow employees were seeking in negotiations. By engaging in the conduct described, I find Bonvenuto did not act unlawfully.

2. As found, supra, at some point between mid-October and mid-November 1991, Bonvenuto, accompanied by Ted Mason, displayed a paper containing Respondent's insurance/raise proposal to employees Smith and Grazulis. He asked what they thought of the offer and they replied, ''not too much.'' He then asked what it would take for them to return to work, and they replied $1 per hour and paid insurance.

The record reveals that Smith is the president of Local 95, but neither he nor Grazulis is a member of the Union's negotiating committee.

By seeking to ascertain what contractual insurance benefits and what monetary raise employees Smith and Grazulis desired, I find that Respondent, through Bonvenuto's conduct, engaged in direct dealings with employees and thereby violated Section 8(a)(5) and (1) of the Act.

3. As found, supra, during the week preceding Thanksgiving 1991, Supervisor Mason asked employee Mathew, an officer of Local 536 and a member of the Union's negotiating committee, ''if there was anything that he knew that could get us back to work, because he said he had a meeting with Frank Carlow the following week.''

I find that by engaging in the described conversation with employee Mathew, Respondent, through Mason's conduct, engaged in direct dealing with an employee in violation of Section 8(a)(5) and (1) of the Act.

4. As found, supra, in early December 1991, Supervisor Mason told employee Smith, the president of Local 95, that he had better get the members together and get a vote to go back to work because he had orders to shut the furnace down.

Noting that Mason's action caused Union Representative Myers to send Smith and employee Joseph to the plant to verify Mason's report, and that Myers himself went to the plant the following day to verify Respondent's plans, I find that Mason did not, by giving Smith the described message, engage in unlawful direct dealings with a unit employee.

5. As found, supra, in October 1991, as supervisor Culp was leaving the plant, he asked picketers, including employee Greathouse, ''what was going on and when we was going to vote.'' When Greathouse told him they had nothing to vote on, he remarked, ''who was Paul Myers that we were listening to him.''

By seeking to persuade employees that they should ignore their union representative and vote on Respondent's proposals, I find that Respondent, through Culp's action, sought to bypass the union and engage in individual dealings with employees in violation of Section 8(a)(5) and (1) of the Act.

6. As found, supra, shortly after the October 17 proposal was sent to employees, supervisor Callas asked employee Joseph, a member of the Union's negotiating committee, what the employee wanted. She replied, ''well what did they ask for?'' and Callas said, ''25, 25, 25.'' When Joseph agreed, Callas said ''you will never get it.''

The described conversation is merely a noncoercive discussion of the parties' positions in negotiations. I find that by engaging in the described exchange, Callas did nothing unlawful.

While the complaint alleges that Respondent official Pat Lavery dealt directly with employees, the record contains no evidence which would support the allegation.

E. *Distribution of the October 17 Memorandum*

Paragraph 15(c) of the complaint alleges that Respondent bypassed the Union and dealt directly with employees by publishing and distributing the October 17, 1991 memorandum.

Respondent correctly observes that Section 8(c) of the Act accords an employer the right to communicate with its employees concerning its position in the course of negotiations. Thus, in *Proctor & Gamble Mfg. Co.*, 160 NLRB at 340, the Board held that Section 8(a)(5) of the Act does not, per se, preclude an employer from informing its employees in ''noncoercive terms . . . of the status of negotiations, or of proposals made to the Union.'' This does not mean, however, that direct communication with employees is beyond the proscriptive ambit of the Act when utilized in furtherance of objectives inimical to the principles of good-faith collective bargaining.

In the instant situation, Respondent advanced a proposal via the October 17 document which had not previously been made at the bargaining table. Indeed, it makes no claim that it offered during bargaining not to contest unemployment insurance claims of employees who elected to resign their employment and seek work elsewhere. Moreover, noting that Myers testified without contradiction that Respondent offi-

cials were fully aware of the fact that he was consistently in Morgantown rather than at home in Moundsville, West Virginia, during weekdays, an inference that Respondent intended that employees receive their copies of the October 17 document before Myers received the copy mailed to his residence is fully warranted. Then, too, inspection of the content of the October 17 document clearly reveals that Respondent intended to pit one segment of the bargaining unit—group 1—against a second segment—group 2. Viewed collectively, the above observations cause me to find that Respondent, by dealing directly with employees and seeking to pit one part of the bargaining unit against another part, sought to undermine the Union's representative status. Accordingly, I find, as alleged, that by distributing its October 17, 1991 proposal outside the formal negotiation framework previously utilized by the parties, Respondent engaged in direct dealing with its employees in violation of Section 8(a)(5) and (1) of the Act. *Facet Enterprises*, 290 NLRB 152 (1988).

F. *Conversion of the Strike*

As indicated, supra, the Union filed the charge in Case 6–CA–23999 on October 21, 1991, some 4 days after Respondent mailed its October 17 memorandum to employees. Myers, the Union's spokesman in negotiations credibly testified that some 25 employees discussed the memorandum with him at the picket line, and he indicated employees complained because he informed them the proposal would not be put to a vote. Myers testified the publication and distribution of the memorandum destroyed the negotiations, and the record fails to reveal that any meaningful negotiation sessions were held by the parties subsequent to October 17, 1991. As found, supra, when the Board's Regional Office issued a complaint on December 5, 1991, after completing the investigation of the charge filed in Case 6–CA–23999, the Union changed the language on its picket signs to signify it was protesting the unfair labor practices committed by Respondent.

In sum, based on the entire record, I find that Respondent's unlawful attempt to bypass the Union and deal directly with its employees, in part, caused the employees to resolve to stay out on strike and such conduct actually prolonged the strike. Accordingly, I find that the strike, which started as an economic strike was converted to an unfair labor practice strike on or about October 18, 1991. As noted by the Board in numerous cases, ''appealing directly to employees in an attempt to undercut the union representative . . . is such as could not help but prevent and inhibit good-faith bargaining, thereby prolonging the strike.'' *Safeway Trails*, 233 NLRB 1078, 1082 (1977). See also *Blu-Fountain Manor*, 270 NLRB 199, 206 (1984), and *Facet Enterprises*, supra at 155.

CONCLUSIONS OF LAW

1. The Respondent, Beaumont Glass Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. American Flint Glass Workers Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All hourly paid production and maintenance employees employed by Respondent Employer at its Morgantown, West Virginia facility, excluding factory and office clericals, technical employees, office janitors and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of the Act.

4. At all times material, American Flint Glass Workers Union has been the exclusive collective-bargaining representative for all Respondent's employees employed in the above-described unit within the meaning of Section 9(a) of the Act.

5. By repeatedly threatening employees with plant closure if they continued to picket and engage in protected concerted activity, Respondent violated Section 8(a)(1) of the Act.

6. By seeking, since October 17, 1991, to undermine the Union by bypassing it and dealing directly with employees, Respondent has refused and continues to refuse to bargain collectively with the Union in good faith as the exclusive collective-bargaining representative of its employees in the unit described in paragraph 3, and it has thereby violated Section 8(a)(5) and (1) of the Act.

7. By the conduct set forth in paragraph 6 above, the Respondent has prolonged the strike of its employees.

8. The unfair labor practices recited above have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the strike which commenced on September 21, 1991, was converted to an unfair labor practice strike and was prolonged by the unfair labor practices of Respondent, I will recommend that, when the plant is reopened, Respondent will offer the employees who went on strike immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements in order to provide work for such strikers. Should the Respondent fail or refuse such reinstatement, any striker who has made a full and unconditional offer to return to work will be entitled to backpay, computed as set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest therein computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Beaumont Glass Company, Morgantown, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure if they engage in picketing or other protected concerted activity.

(b) Refusing to bargain in good faith with American Flint Glass Workers Union, by engaging in activities with respect

[9] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

to its employees which are directed at bypassing and undermining the bargaining representative of those employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with American Flint Glass Workers Union as the duly designated collective-bargaining representative of all hourly paid production and maintenance employees employed by the Employer at its Morgantown, West Virginia facility; excluding factory and office clericals, technical employees, office janitors and guards, professional employees and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, if understandings are reached, embody such understandings in a written signed agreement.

(b) Upon reopening the plant, offer to all striking employees reinstatement to their former positions or, if those jobs no longer exist, to substantial equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements, and make whole any employee not offered immediate and full reinstatement in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts of backpay due under this this Order.

(d) Post at its facility at Morgantown, West Virginia, copies of the attached notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 6, shall be signed by an authorized representative of Respondent and posted immediately after their receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with plant closure if they engage in picketing or other protected concerted activity.

WE WILL NOT refuse to bargain in good faith with American Flint Glass Workers Union, by engaging in activities with respect to our employees which are directed at bypassing and undermining the bargaining representative of those employees.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain collectively with American Flint Glass Workers Union as the duly designated collective-bargaining representative of all hourly paid production and maintenance employees employed by us at our Morgantown, West Virginia facility; excluding factory and office clericals, technical employees, office janitors and guards, professional employees and supervisors as defined in the Act, with respect to rates of pay, wages, hours of employment and other terms and conditions of employment, and, if understandings are reached, embody such understandings in a written signed agreement.

WE WILL, on reopening the plant, offer to all striking employees reinstatement to their former positions or, if those jobs no longer exist, to substantial equivalent positions, without prejudice to their seniority or other rights and privileges, discharging, if necessary, any replacements, and make whole any employee not offered immediate and full reinstatement.

BEAUMONT GLASS COMPANY